Need to enhance the role of Parliamentary Sovereignty in the sphere of international treaties entered into by the Government of India

SHRIMATI BRINDA KARAT (WEST BENGAL): Sir, with your permission, I will first read out the Resolution. This House holds that political differences, notwithstanding a broad consensus across party lines in the area of foreign policy, particularly, in the sphere of international agreements, is in the national interest. Towards achieving such a consensus, the House believes it is necessary to enhance the role of parliamentary sovereignty in the sphere of international treaties entered into by the executive. In the recent past, the Government of India has entered into several international treaties and agreements both, bilateral and multilateral which have major implications for the people of our country. These include the WTO agreements, the bilateral Free Trade Agreement with the ASEAN and the Indo-US civilian nuclear agreement. Many more such agreements are in the process of negotiations, like the one on climate change or FTAs with other countries like the EU. These agreements are not merely of a technical, administrative or executive nature but also have an impact on the lives and livelihoods of the people. Some of these agreements also have an impact and areas that fall under the domain of the States, like agriculture.

That the House considers that given the wide implications of these agreements, the present role of the Parliament in India in the case of international treaties and agreements which is restricted to adopting domestic legislation in keeping with the international agreements is inadequate and unsatisfactory.

The legal validity and binding nature of international treaties in most cases goes beyond the tenure of the Government which may have signed such a treaty. Given the possibility in the parliamentary democratic framework of change of Governments and ruling political parties of combinations, the requirement of parliamentary ratification before such a treaty is finalised becomes self-evident.

Precisely, to ensure bi-partisan support, many parliamentary democracies have adopted such a model. In the United States of America, Senate ratification is essential. Countries like Argentina and Mexico follow the same practice as the USA.

In the recent past, countries like South Africa and Australia have amended their Constitutions to enhance the role of their Parliaments in ratifying the international treaties and agreements. In a majority of OECD countries, parliamentary approval is required, at least, in cases of certain categories of treaties.

This House resolves that all such bilateral and multilateral international treaties and agreements, which are not of a technical, administrative or executive nature, be ratified by the Parliament after being negotiated by the Government of India before they are signed.

The House recommends that if such ratification requires a constitutional amendment, the Government may move such an amendment without delay.

Sir, this is basically the Resolution. I am really happy that luck favoured me this time and my Resolution got the first number in the balloting, and I am able to move this. I believe, it is essential because of the immediate relevance of such a discussion in the present situation. Our team is at present in Copenhagen and we hope that they are going to come to some kind of an understanding which is going to help the world in meeting the challenge of climate change. But the question remains how are the Indian people to be consulted in this process of coming to an agreement; what are the rights of the people of India in coming to such agreements and how are the rights of the people of India reflected in our legal and constitutional framework?

When you talk about international treaties, Sir, it is being calculated by a former Governor-General of Australia that since the end of the Second World War, there have been over 50,000 treaties which have been signed in the international sphere. When we look at the large number of treaties which have already been signed and are being implemented and we also look at the present international situation where the implications of a single treaty signed have such great ramifications, I think, it becomes very important, in the first instance, to come to some understanding as to the increased importance and relevance of international treaties in the current international situation.

I would like to, in putting my arguments forward, Sir, discuss it in three sections. The first is the political aspect. The second is the constitutional aspect and the third would be to have a look, at least, as to what the situation is in other countries and then I would like to make certain recommendations for this House to consider.

Coming to the first aspect, the political aspect, it is a fact, Sir, that since 1990s and collapse of the Soviet Union, another socialist countries of Eastern Europe, the balance of power and the co-relation of forces in the international sphere have undergone a great change.

And within this change, it is also an undoubted fact that, at least, in the first decade, or may be the first decade-and-a-half, of this changed international situation, the advantage did lie with the United States of America. This was reflected, to a great extent, in the kind of international developments that we were witness to in the first decade after the collapse of the Soviet Union and that block of East European socialist countries. Parallel to that political development which, I believe, put the developing world, countries like India, at a disadvantage, because of the shift of power to the United States and to the Western Block, causing difficulties for the non-aligned countries, of which India had played the leading role and could get some space and advantage for the interest of the country and for the developing world, the parallel economic development was that of the development of, what is now called, the neo-liberal framework. That, Sir, is a set of economic

policies, which is multinational in character, which crosses international boundaries and which is also given the term 'globalisation'. Personally, I am not in agreement with just calling it globalisation because I don't think any thinking citizen of the world can ever be against globalisation *per se*\ we are all products of globalisation; our civilization is a product of globalization. We learn from the cultures of other countries; we have given so much to other countries in so many spheres. Therefore, the process of globalisation is perhaps as old as civilization is. So, it is not globalization, which we at all question, or the processes of exchange between countries, but it is the present international political context on the substance of that globalization, and which is the driving force of that globalization, which we have to enquire into and question, whether those processes of globalization which, I believe, are driven by imperialist interests, are, indeed, affecting the international situation in such a way as to make the issue of governance itself in countries like India having to question the impact of such globalization on our own country and on our own institutions. As I said, one of the core efforts of this process of economic globalization is, to cross the border and to have an approach in which the strongest forces driving this process of globalisation can dominate the world economy. International markets which are dominated by big multinational companies, which do not accept borders and which move around the world at will, looking for profits and who, therefore, require legal frameworks internationally and within nations to be able to satisfy this drive for profits, this international economic model which is being pushed today in the name of globalization and within new liberal frameworks is what constitutes, I believe Sir, one of the most driving forces behind the whole question of international treaty-making. That is because we cannot look at international treaties or the process of making treaties divorced from the present international context, divorced from the forces which are working in the present international interest, divorced from the powerful interests which are driving those international treaties.

And since 1990s, we have seen how international treaties actually impact in an extremely widespread way the lives and livelihoods of people within countries who have actually nothing to do with the process of international treaty-making. This is a reality. And if this is the international context of globalisation in which the process of international treaty-making becomes core and crucial, and is admittedly so by all the parties concerned, then, undoubtedly, we, in India, who are also willingly part of that process, whether we want to be or not be, are part of that entire international community, we are affected by the developers of that international community, and precisely because of that we have to once again reconsider and look at our own processes of international treaty-making. Therefore, I would say that given the international context, given the political context, given the importance of international treaties in the present processes of globalisation, this goes beyond political parties and beyond a particular Government. And, therefore, when I move this Resolution, in the very first paragraph of my Resolution I say that please let us not look at it from the

prism of the spectacles of our own parties. I belong to the CPI(M) and everybody knows that my party has a very clear position as far as international situation is concerned, as far as our analysis of US imperialism is concerned and as far as our belief in the alternative of socialism is concerned. It is well known. Other parties have got their own positions. But when we look as a nation, when we look as Members of the Indian Parliament and when we look at it as Indian citizens, then, undoubtedly, it is true and undeniable, Sir, that today it is in the national interest to have the widest possible participation in this whole process of international treaty-making. So, it goes beyond political parties and, as I have said in the Resolution, Sir, the life of a Government is for five years, the life of a treaty may go far beyond the life of that Government and, therefore, the next Government which gets elected, according to the parliamentary procedures that we follow in India, has to, undoubtedly, follow that treaty. It cannot, all of a sudden, say 'No' to that treaty. Of course, it can and it has a right to, particularly if it has been elected on the plank to go against the treaty it has a right to say 'No'. But, normally speaking, Governments are expected to uphold the international treaties which their previous Governments may have arrived at. This is the normal way of doing things. Given the importance of the international treaties in today's world, I believe that we really have to have a very serious consideration, Sir, as to the methods of how we do this within India. The second political aspect is that, in India, we have treaties which also may have an impact on the federal nature of our Constitution. Now, as everybody knows, there is a Union List and there are State subjects also which are entirely under the jurisdiction of the States. In the present situation, a treaty may be reached in which a very direct impact of that treaty has to be borne by the States. I am going to give you several examples of that. But, at the outset, the point that I am making is that international treaty-making also has an impact, more so today, on the federal nature of our polity and on the rights of the Centre and the States and on various, responsibilities of the Central Government *vis-a-vis* the States.

And, therefore, we can have a position where the Central Government comes to an understanding and signs the international treaty which directly has an impact on the people living in a State, and, where that State itself has got little or no right and no say in any measure in trying to understand that treaty -- I am saying, by law, at present, by procedure, and, also by practice.

Hon. Vice-Chairman himself comes from the State of Kerala, and, he is very well aware that only very recently the large sections of people of Kerala had to form a human chain from one end of the State to another, precisely because of what they consider as infringement on their rights, right to livelihood after the Government of India had signed an FTA with the ASEAN countries, which they believe would directly have an impact on the rights of fishermen, on the rights of the fisher people, on the rights of other traditional industries, which, they believe, would affect them very deeply. They also believe that this was an impingement on their democratic rights as Indian citizens.

So, the issue of the federal character of the Constitution makes it incumbent on the Government of the day to take into consideration the requirement of a much wider participation since those treaties have a very long-term impact on the lives of the people of the State.

The third aspect of the political background is the fundamental rights of the people. For example, if I sign an agreement under the WTO, which removes Quantitative Restrictions on the number of commodities which are to come into India, immediately, there is a possibility that our markets would be flooded with imported goods, which are highly subsidized by the developed countries, which would immediately have an impact on the lives and livelihood of farmers who are producing that particular agricultural product. It has happened. But I am saying that even at the theoretical level, you can see how an agreement like the WTO can have a direct impact on the fundamental rights of our citizens granted to us by the Constitution of our country, for example, the Right to Life.

It is not just one agreement. Since 1994, when the WTO came into existence, the implications of WTO are there. Just now, we had a discussion in this House on what is going to come out after the failure of the Doha Round of talks, how the Government is going to take it forward, or, how the developed countries are putting pressure on India at certain levels. I am not here on the point whether the Government is going to defend the interests of the farmers of this country or not, that is not my point. My point is that these are issues which affect the fundamental rights of every citizen of this country. Because, for taking any decision, when, a person, as our negotiator, who has been given the responsibility, signs an agreement, that agreement has an immediate impact on all. Take, for example, the cotton farming community in Vidarbha. So, the fundamental rights of the people, which get directly impacted by signing of such treaties, is another very important aspect of the political framework today in which we are moving forward.

The fourth aspect of the political framework is the question of accountability, and, when I come to the Constitutional aspects, we can discuss it a little further. Sir, regarding the accountability, after all, the Constitution of India and the founding Fathers and Mothers of our Constitution... I am glad that you smiled. Sir, very often, the 'Mothers' in the Constitution are ignored. ...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Oh yes. Always, it is 'fathers' and you are saying, 'mothers'. It is good. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: Thank you, Sir. There were many women in the Constituent Assembly, Sir.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Certainly. It is true. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: So, we can certainly talk about those enlightened men and women who founded our Constitution. Of course, the most-towering figure was Baba Saheb Ambedkar, and, he had many important comments to make on the issue of accountability of the Executive to the Legislature. And, that was the spirit of the Constitution -- the accountability at every single level to the people. The Constitution of India also starts, "We, the people give to ourselves..". Therefore, I believe, that when the power vests solely with the Government, as it does today, to go into signing these international treaties, the basic issue of accountability which is one of the most important prevailing basis of our Constitutional framework, that unfortunately, Sir, gets completely eroded. This erosion is not just a technical issue of being eroded. This erosion hits at the very pillar of democracy which is that whatever action the Government takes, that action, it has to be accountable for. Now, some people, I have seen in the earlier debates on this, say, "Yes, we are accountable. We go back to the people. The people don't want us. We are voted out and thrown out. Or, the people have voted us into power, and, therefore, we have every right to do it. I signed the Indo-US Nuclear Deal. You opposed the deal. Your seats have been reduced; my seats have been improved, and, therefore, it is proved that the people of this country want the Indo-US nuclear deal". I beg to differ with that kind of understanding because that understanding skips over one of the major questions which is that these treaties which are binding in nature, which bind this country, such treaties which are done without the assent of the elected Members, elected from all corners of India, credibility of that process itself comes into question. Therefore, I would like to stress, Sir, that diktats or the use of majorities, whether manufactured or genuine, in the formation of Governments do a disservice to the interests of our country. We talk about decentralisation, Sir. I believe that India's experience in the Panchayati Raj is certainly an example that we can be proud of, in which we believe in decentralisation of power. We believe in the participation of the largest number of people in issues which concern their lives. But on the one hand, we advocate decentralisation of power, on the other, we practise the most highly centralised application of power in this way of international treaty making. It is so highly centralised that sometimes even hon. Members of the Cabinet and their acquiescence is taken as a formality. Sir, these highly centralised methods do not suit a democracy like India. So, whether it is in the decision-making process, whether it is in the implementation of the principle of accountability, whether it is in the defence of the livelihood of our people who are impacted by such treaties, whether it is in the upholding of the federal nature of our Constitution and being extremely cautious before taking any decisions which impinge on the rights of the States in matters which are under their jurisdiction on all these matters, Sir, I believe that the present process of international treaty-making requires a very strong reconsideration.

I want to give the hon. House and the hon. Members here an example of one of the WTO processes which has been documented by the National Working Group on Patent Laws which set up

a People's Commission on GATT. The membership of this Commission included eminent persons like Justices Krishna Iyer, Chinnappa Reddy, D.A. Desai and others. They made a very detailed account of what was the political process which went into taking forward the issue of the WTO by the then Government and how Parliament handled the negotiation. Sir, this is what the Report says.

On March 15 and 30, 1990, the Government stated "that it will not participate in any negotiation under threat of retaliation." This was the Government's answer in the Lok Sabha to Questions No.33 and 2873.

On March 19 and 27, 1990, the Government stated that there was no proposal to amend the Indian Patents Act which was a salutary legislation. This was in an answer given in the Rajya Sabha.

On May 3, 1990, the Government stated that investment and services lie in the domain of sovereign decision-making not covered by GATT or any other multi-lateral or bilateral agreement. This was in an answer given in the Rajya Sabha.

On 4-10th May, 1990, the Government reiterated that it cannot enter into bilateral negotiations to change basic economic policies which are in the domain of our sovereign decision-making, and that too, under threat of retaliation. India would provide support and leadership to the concerns of developing nations.

On 4th and 11th May, 1990, the Government maintained that the present intellectual property laws are adequate.

I am telling you the decisions of that time and how they changed. How they changed without any reference to Parliament, and how short-sighted was the Government that it could not see what was coming before it.

On 17th May, 1990, the Indian Government repeated, 'The Indian delegation also reiterated its stand that it would not negotiate under the threat of retaliation under Super 301.'

This whole report is there. Then by 1991, how did the Government of India change its stand? It said, India would not negotiate under threat of retaliation. It was softened to say that 'We regret the unilateral decision of the U.S. while these issues are already being negotiated, In other words, the US was retaliating, but we were continuing our negotiations.

On July 19, 1991, the Government talked of different perceptions on patent and trademarks, but it did not take any stand.

On 11th September, 1991, the Government reiterated that there was no proposal to amend the Patents Act. We know what happened to that. And we know how the Patents Act had to be amended.

And what is happening today in the field of patents. We are all aware of that. Therefore, we find that in the first five years of the Uruguay Round, the Indian Government failed to make any substantive policy statements in Parliament, the State Assemblies, to Chief Ministers representing the people. It failed to issue any White Paper detailing the status of the negotiations or the position taken by various countries and subsequent to that, the situation entirely changed. We signed the WTO in 1994 without reference to Parliament and following that, we had to go through domestic legislations which did to our economy precisely what the Government earlier had assured the House would not happen. Why did it happen? Because the Governments change. In the period of the last ten to fifteen years, while the WTO negotiations were on, after India joined the WTO and following the signing of the WTO, the implications on our own domestic legislations, various Governments were there. But, once you signed the WTO without reference to Parliament, every Government subsequently had to follow the given path. And, Sir, precisely because it was done by Executive order, today again, the people of India and the Parliament of India are entirely in the dark as to what is actually happening in the negotiations at present and what is going to be the final outcome. Sir, on the basis of the experience of the last so many years, it becomes very apparent that the entire political process which has been followed, which was followed and which is being followed is entirely in contrast to what any democracy actually requires. Then, we know about the whole political process which was behind the signing of the Indo-US nuclear deal recently. We may have great differences on the agreement. We do have differences on the agreement and because of which, as you know, the Left Parties withdrew support from the Government. But, the fact of the matter, the core issue, at that time, the majority of Parliament was against the signing of the Indo-US Civil Nuclear Cooperation Agreement. The sense of both Houses of Parliament was against that agreement. It is true that the Government came before Parliament. It is true that we had several discussions on the issue in Parliament. But, at the end of the day, the Executive, at that time, when the process was on for negotiations, did not take Parliament into confidence before the *fait accompli*. It is not only taking into confidence because taking into confidence can also become a euphemism and also bypassing. Unfortunately, that is precisely what happened.

Today, Sir, we are in the middle of climate change negotiations. There are so many different pressures on us. We know that. We have heard all their arguments in the House. I am not going into that. There are different views about it. But, surely, in our democratic process, before signing an agreement which is going to bind India, should it not be incumbent on the Government to come to Parliament, take the sense of Parliament, take a vote of Parliament on aspects of any agreement that the Government wants, which is going to bind this country and then go forward? So, after the next elections, if this Government comes back with greater majority, it will have greater power. But, if people of India decide another Government to come to power, that Government will be morally, politically, democratically, constitutionally and legally bound and will be committed to taking that treaty forward.

And, therefore, I believe that politically, that is what is extremely important.

Now, the second aspect that I want to bring to the notice of the House is the Constitutional aspect because in my Resolution I have said that, if it is so required, a Constitutional amendment, and why I say that is, there are two opinions on this. Even among those who want parliamentary ratification before a Treaty is signed, there are opinions on this. One opinion is that you require a Constitutional amendment. In 1997, there was a debate in this very House on a similar Bill -- not on a Resolution but on a Bill -- moved by a Member of my Party, comrade M.A. Baby. He bad moved the Constitutional amendment to ensure ratification of Parliament. It is a very interesting debate; I have been through that debate. Pranabda also participated in that debate and, you know, he had argued, of course, against any ratification and he had given some examples why a ratification was dangerous. In any case, it was an interesting debate. But that was on the issue of Constitutional amendments. Some people believe in the present legal constitutional framework, a constitutional amendment is required. But there are many others who believe that the Constitution itself, in the present set-up, enjoins on the Government to consult. Not only consult Parliament. But suppose the Government does not have the sole Executive right to sign an international treaty without ratification by Parliament. Another aspect of this is that the debate, at present, is whether it is required that Parliament should pass a legislation by a simple majority which enjoins on the Government to get the ratification to sign an international treaty. Sir, you know, when the BJP was in power, they had set up a Committee to look into different aspects of the Constitution. Of course, there were many criticisms of that Committee because it was felt that they were trying to hijack the Constitution of India etcetera and, maybe, some of that criticism had some validity. But I have been going through some of the papers relating to different aspects of the review of the Constitution and how it has been working. I came across an extremely interesting paper which is precisely on this topic which was called "The Treaty-making Power under our Constitution", and it was included in the volume on the "Review of the Constitution". Sir, from that, I just want to, for the information of the House, point out to you some of the major issues in the Constitution which they believe give Parliament the right to ratify the treaties.

Now, the first point that they have raised is that Article 246 of our Constitution affects a distribution, which I have already mentioned, of legislative power between the Union and the States. Article 246(1) says:

> "Parliament has exclusive power to make the laws with respect to any of the matters enumerated in List I of the Seventh Schedule (in this Constitution referred to as the "Union List")."

I will repeat that:

> "Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I."

Clause (2) speaks of the Concurrent power of Parliament and State Legislatures to legislate with respect to matters in Concurrent List while clause (3) empowers the State Legislatures to legislate with respect to matters in the State List. Clause (4) empowers the Parliament to make laws with respect to Union Territories without any limitation of division of legislative power. The Seventh Schedule to the Constitution which is referable to Article 246 contains three Lists, which I have just mentioned: Union, State and Concurrent.

If you look at the relevant entries, particularly entry 14, they are as follows:

"13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction."

From a reading of article 246 along with the said entries, it is obvious that the Parliament is competent to make a law with respect to several matters. That we all know. I am not going into all that. But by virtue of article 73 of the Constitution, however, the Executive power of the Union extends, in the absence of Parliamentary legislation, to matters with respect to which the Parliament has power to make laws, subject to, of course, Constitutional limitations. It is well known that the Parliament has not so far made any law regulating the procedure concerning entering into treaties and agreements, nor with respect to implementation. Equally, clearly no law has been made regulating the manner in which the Government shall sign or ratify international conventions and treaties. The Parliament has a right to make the law. The Parliament can make such a law. The Parliament has not yet made such a law. However, the Constitution gives the Parliament the right to make such a law. Therefore, the other question that you require a Constitutional amendment for this is answered by these arguments. Under these articles which I have quoted the Parliament can itself make a law which can bind the Government both in the manner and the extent, and the procedure of signing such international treaties.

Now, let us turn to article 253. Article 253 is one of those set of articles which provide certain exceptional situations in which the Parliament can legislate in respect of matters in the State List. Ordinarily speaking, the Parliament can't make a law with respect to a matter in the State List. The State Legislatures alone have the exclusive power to legislate in respect of the States. This is my point about the federal issues which are being impinged on. Article 253 reads as follows:

> "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

The opening words of the article "notwithstanding anything in the foregoing provisions of this Chapter" mean that this power is available to the Parliament notwithstanding the division of power between the Centre and the State by virtue of article 242. It is essential. Basically, what it means is that the present Constitutional provisions give the power to the Parliament to make any legislation regarding international treaties which the Government may sign. It also has power conferred upon it by the Constitution of India and the clauses, which I have mentioned, which allow it to insist that the Government itself mandatorily take the ratification of Parliament before going forward to sign any such treaties.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Brindaji, how much more time do you want?

SHRIMATI BRINDA KARAT: Sir, I would really like to continue the discussion and there are other speakers.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): There are others also.

SHRIMATI BRINDA KARAT: Sir, my request is that we will go on with this discussion later. I have got another full section which I want to present before you. So, with your permission, may I continue? On Private Member's Resolution, if you have any time limit....

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): The point is that the total time allotted is two hours. You try to conclude.

SHRIMATI BRINDA KARAT: Sir, if it is going out of the point, then I can skip it. I am on the Constitutional provisions.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): You try to conclude. That is all.

SHRIMATI BRINDA KARAT: Sir, further to this, I would also like the hon. House to refer to an extremely important analysis which was made by the Chairman of the Law Commission, Justice Jeevan Reddy, and in an article, which he wrote after he finished his tenure as the Chairman of the Law Commission. Continuing the arguments, which were made by this Paper, which I have just read out to you, he says: "Clause 3 of article 75 says, 'the Council of Ministers shall be collectively responsible to the House of People'. This is the principle of accountability of the Executive to Parliament. In short, whatever the Executive does, in exercise of its executive power, or otherwise, it is accountable to Parliament." Indeed, in a Parliamentary democracy, and particularly, under our constitutional system, it is unthinkable that there is any sphere of activity of the Executive in respect to which it is not accountable to Parliament." He further says, "There is no such thing as the prerogative power of the Executive, immune from Parliamentary scrutiny and intervention." Now, of course, there may be other equally eminent jurists who may give the Government of the day legal opinion that they can go ahead into exactly what they want, when they want, where they want and

how they want, without reference at all. There are people, who may also hold that point of view. But, I believe, in the national interest and looking at the present international situation, the views of these eminent jurists, whom I have quoted, provide ample constitutional and legal evidence as to how the Executive power cannot and should not be used, in any way and by any action, bypassing the elected representatives of the people. And, since today, the governance itself is determined by substantive measures, by the writ of international Treaties, just as we discuss every single policy matter, through our own legislations in Parliament and decide by vote whether it is to be adopted or not, similarly, international treaties do not, in any way, have any less implication than our own laws, and, therefore, if we subject our own laws, before adoption, to such scrutiny, what is the logic to take out, of the purview of the elected representatives of the people, such an important matter, as that of international treaties which have the same binding aspect as our own laws? Therefore, legally and constitutionally, there is a very, very strong position for Parliament to legislate such a law, and I, strongly, recommend that we adopt this Resolution and ask the Government to bring a law, for prior Parliamentary ratification, before signing any international treaty. I would also like to differentiate here, because I am not saying this about each and every international treaty. There may be, for example, an extradition treaty. There may be treaties of recognition of a country. There may be certain treaties which do not impact, in any major way, on the livelihood and the various aspects, which I have already mentioned. Certainly, as Government Executives, you have such treaties to sign. You can bring them back. But how do we go ahead with that? Who is to decide which treaties of such importance should come to Parliament, and which treaties are not of such importance? The Government alone cannot decide. For that, there are very important recommendations which have been made by these Committees.

There is a lot of work which has already gone in for this, and there are some very important recommendations which have been made. Some of the recommendations made by a very important Committee which had been set up to look precisely into this matter was: One that Parliament should make a law, and the second point that was made is that there could be an all-party committee set up by Parliament to look at these various treaties, to categorise various treaties, and those treaties which the all-party committee felt need not go to Parliament for parliamentary scrutiny, automatically, the Government has the right to go ahead with those treaties and sign it. So, there is already a...*(Interruptions)*... What is the problem? Please speak, Vayalar Raviji, if you want to. ...*(Interruptions)*...

THE MINISTER OF OVERSEAS INDIAN AFFAIRS (SHRI VAYALAR RAVI): When you provide a law for a treaty, it is a legal thing. You cannot discriminate a treaty.

SHRIMATI BRINDA KARAT: You see, there are rules and the laws. We also know. When you write the treaties, and there you define which specific treaties you are talking about and how those treaties are to be considered, which categories they can be put in. Certainly, you can draft the rules,

in which the rules can state specifically that. Sir, because Vayalarji raised an important question, I want to read out the exact recommendation which has been made. Anyway, this is quite a long thing. But, these are the recommendations of the Seminar on Setting up a Parliamentary Committee. "Looking at treaties with a federal structure, and also taking into account the views of the State Governments; mandatory consultations with State Governments on treaties which directly impinge on the State List. Certain classes of treaties shall be acceded to only after Parliamentary ratification."

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Now, Brindaji, conclude. You have made all the points.

SHRIMATI BRINDA KARAT: No, Sir; I have got one more point, I would just give you an example here. I am saying this because these are not things which I have suddenly plucked. When all these important recommendations have been made by these eminent jurists, they have also referred to certain international experiences, Sir. And, of course, there is a completely wrong perception that Communists are "anti-America". Very often on the floor of this House, we have had occasions to state, time and again, "Please don't say, we are anti-America. We are very pro-American people." ...*(Interruptions)*... We are very pro-American people. We are pro-people. We are pro-people of all countries. It is the Governments' of specific countries, and not just the Governments, but the actions of those Governments or the policies of those Governments, which we believe go against basic democratic and civilisational norms which we oppose. And, in that context, when these countries, whose certain policies we strongly oppose, also adopt certain policies which are good, we have to learn from that. And, in the context of international treaties, the United States of America...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): You have nearly taken one hour, remaining only one hour for others.

SHRIMATI BRINDA KARAT: Sir, 1 am just going to finish. ...*(Interruptions)*...

THE VICE-CHAIRMAN (PROF. P.J. KURIEN): Yes, nearly one hour.

SHRIMATI BRINDA KARAT: No, Sir, I started at...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): You started at 3.43.

SHRIMATI BRINDA KARAT: Is your watch right?

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Yes, it is 4.43. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: I am just finishing, Sir. I am just going to quote three examples.

SHRI S.S. AHLUWALIA (Jharkhand): She does not want that anybody should participate in it.

SHRIMATI BRINDA KARAT: So, it can be extended. You are going to participate in it.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): His name is also there to support you. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: Sir, the Constitution of the United States has had, as Krishna Iyer says, the salutary sagacity to circumscribe the President's treaty making power by article 2, section (ii), "He shall have the power by and with the advice and consent of the Senate to make treaties provided 2/3rd of the Senate Members present concur. With Senate validation absent, Presidentially signed treaties have been causalities." This is the United States of America, Sir. Therefore, at least, on this point, it would be very good to take the model of the United States, as far as international treaty is concerned. Sir, even a small State like Nepal, in its earlier Constitution has a ratificatory imperative for foreign treaties. Its Constitution 1999; of course, it is being revised; I am sure, they will keep this clause; I do not know what finally they will decide. But, in any case, let me read: "The ratification of accession to acceptance or approval of treaties or agreements, to which the kingdom of Nepal or His Majesty's Government has become a party, shall be as determined by law, shall *inter alia* require ratification of accession to acceptance or approval of treaties or agreements on the following subjects by a majority of two-thirds of members present at a joint sitting."

South Africa, Mexico and many other countries, Sir, similarly have these provisions. Therefore, I would appeal to the House to support the Resolution. I would appeal to the Treasury Benches also to rise above the party considerations. This is not a criticism of this or that party, it is not a criticism .of this or that Government; it is a collective experience of the country. I hope, the House will support the Resolution I have moved.

Thank you so much, Sir.

The question was proposed.

DR. E.M. SUDARSANA NATCHIAPPAN (Tamil Nadu): Sir, thank you Mr. Vice-Chairman for allowing me to speak. I am really thankful to Smt. Brinda Karatji for raising this particular topic being discussed, which is very much relevant now. But, at the same time, I am also surprised to hear from a very staunch communist ideologue and leader getting inspiration from the U.S.A. I would read clause 6 where every word is from the American dictionary: "To ensure bipartisan support, many Parliamentary democracies have adopted such a model, for example, in the U.S.A., ratification by the Senate is essential and countries like Argentina, Mexico follow the same practices as the U.S.A." I am really surprised to see the U.S.A inspiration through Smt. Brinda Karatji, from the Constitution of the U.S.A. But, I would like to be very frank, Sir. I would like to say that our Constitution is much better than the U.S.A. It can also be said that it cannot be compared with other Constitutions in certain cases. The history of the Constitution should be taken into consideration. Our Constitution is

made on the basis of a quasi-federal set up; it is a Union of States but it is a Unitary Government. The constituent States are not having any sovereignty in India; no State has got any separate Constitution except Jammu and Kashmir. The rest of the States are having common Constitution, that is, the Constitution of India. But the case of U.S.A. is totally different. The constituents have got separate Constitution. They have got separate citizenships. They have got separate systems for everything. The U.S.A. is a Union of States where they can secede from the U.S.A. on the basis of certain rights which are given in the Constitution. The Indian States have got no provision to secede from the Union of India. We have succeeded in getting more nations to join with us; just before some time, we debated on Sikkim. So, we cannot compare ourselves with the U.S.A., but, at the same time, we have got our own historical moments. We felt that by surrendering certain rights of the States—linguistic-based or kingdoms-Union of India is a better forbearance of geo-political system which can withstand the global system which was evolving after the Second World War.

Sir, after the First World War, the world tried to have a United Nations, but it failed. But, the Second World War created awareness among the peoples at the international-level; they came forward to have the United Nations. They wanted to have a global trade system; they wanted to have a global bank, but they could not succeed in establishing a trade institution and also a monetary institution. They could succeed establishing only a political institution, that is, the United Nations which is accepted even today. But, the so-called system -- which was followed in USA at that time -- could not accept the global trade system. They wanted to have a global system. Many of the countries have united and got GATT, *i.e.* General Agreement on Tariffs and Trade. In that, 23 countries participated. One of the countries is India. But, at that time, all the countries felt that we should have an international trade system also. But the country which could not have that system, which could not be palatable for them, was the United States. The,United States felt that they could not have a control of our own sovereignty by way of trade system which would have an equal participation of all other nations. Therefore, they withdrew from that. That is the reason why we could not succeed in having a World Trade System. But, at the same time, we could also not accept the World Bank system which later became International Monetary Fund or World Bank. Those things were not at all accepted as a binding nature for all the other countries. It was only voluntary nature on which we have accepted it. But, after eight round of talks, you know, Sir, in the history of the evolution of the World Trade Organisation-eight countries, various places, various participation-various number of countries have grown up from 23 to 60. Many countries participated on various trade talks and every trade talk which was held in different countries was having certain obligations on the Nation States and every time the Executive of India has brought amendments before the Parliament by their own enactments. More or less, the important enactments were only reduction of excise or customs duty. Those things were brought before the Parliament and it was debated and

afterwards the obligations which were given in the trade talks, *i.e.* GATT and which was having a participation of the Executive could come forward and tell the nation that these were the things we have committed, therefore, kindly accept it. Therefore, the Parliament has accepted it. Therefore, there were amendments in many of the Acts, more so, on the Finance Act and Income Tax Act and we brought the amendments according to the international obligations. Sir, at the same time, I feel that it is a correct thing to bring it to the notice of the Executive that in many cases they take it for granted that Parliament need not be informed of. Before beginning or sitting for a convention or agreement they never got the consent from the Parliament to go and participate in a particular event. They participated. You know very well at international levels, there may be participation, they may be just witnessing the happenings in a particular convention and then, they will come forward and say, no, we will not accept this convention. We are not party to it".1 In certain things, India participated. They deliberated, they made amendments but finally, they have not signed the covenants or agreements and in certain cases they said that we will sign the agreement but we will not come forward with certain laws. But, unfortunately, these are the main things and I feel, Madam Brinda Karat wants to bring many of the things that were not brought or the Parliament was not taken into confidence by the Executive when they were going for international conventions. That is why I feel climate change is also very much upon the mind of the hon. Member to say, before and after you had to come forward with what happens and what is your proposition and what is the demand by the international forces and its aspect. Before going this time, UPA1 and also UPA2 Government have taken the Parliament into confidence in each and every aspect. In the matter of Civil Nuclear Agreement with US, more than four times the same matter was threadbare discussed and in both the Houses, it was discussed and in both the Houses, hon. Prime Minister replied and all the concerned nodal Ministers have also participated and intervened in the debate.

Every debate was telecast by the electronic media and also published. Finally, they came to the conclusion of signing the document. Therefore, this is the best method and the best practice. The Executives have to follow this practice before going in for an agreement. Similarly, Sir, the UPA - 2 has taken up the issue climatic changes. That issue was brought before the Parliament. Both the Houses deliberated at each and every stage. According to the Opposition, there were contradictions which were also brought before the House and which were clearly clarified by the hon. Minister. Afterwards only, they are going for the talks at the international level. Therefore, we are following the proper convention. There are other Governments which have not followed conventions. But I would like to mention here that the WTO was also discussed before signing the Dunkel Agreement. We know very well that this discussion was held in 1985. There were many talks at that time. I remember,

at that time, the hon. Minister, Shri Pranab Mukherjee was the concerned Minister who explained to Parliament why we are going for discussion and, subsequently, the Dunkel Agreement was brought before the Parliament. At that time, it was Mr. Narsimnha Rao's Government. The Congress Government was there. In 1993, for the first time, the Parliamentary Standing Committees were constituted. There was a Committee by the name of the Committee on the Ministry of Commerce. In that Committee, as per the usual practice, there were 13 Members from Rajya Sabha and more than 30 Members were there from Lok Sabha. It was chaired by the Member of Parliament who subsequently became the Prime Minister of India, Shri Gujaralji. He presided over that meeting. Then, about 13 sittings were held of that Parliamentary Standing Committee. In that Parliamentary Standing Committee, everything was discussed. The officials who participated in the discussion of the GATT Agreement, the Dunkel Agreement and the evolution of the WTO, whoever participated in those meetings on behalf of the Government of India, those who were criticising this Agreement, those who were saying that you are surrendering the sovereignty of India, those people were also examined as witnesses before that Committee. And, then, finally, there was a recommendation given by the Parliamentary Standing Committee saying that be careful when you are going in for international agreement and do not surrender your sovereignty, but, at the same time, protect the interests of India at the international forum. That was the recommendation made by that Parliamentary Standing Committee. On the basis of that recommendation, the Government of India, the Executive represented at the WTO and we are a part of the WTO now. Sir, we have to clarify one thing. The WTO is totally different from the United Nations because here, everybody, every nation, whether it is the least developed nation or a small nation, they have got the same one vote, just like the United States of America. They do not have any provision for taking any unilateral action or they cannot have a veto power. They cannot take any decision by veto system. That is why the United States of America and other nations are not accepting the WTO seriously, because they feel that all the small nations are also sitting there; they are also talking equally; therefore, why should they give a chance to the small nations. That is the main reason why the Ministerial talks were stalled, or postponed, or even Doha talks could not take place. Can I continue, Sir.

SHRI S.S. AHLUWALIA: Yes, you have five minutes.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): No, I think, after two, three minutes, Mr. Pilania would like to start.

DR. E. M. SUDARSANA NATCHIAPPAN: No, Sir, this is an important discussion.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): I have no problem. The total time allotted is two hours. If the House extends the time, I have no problem. ...*(Interruptions)*... Next day we will decide. Try to conclude anyhow.

DR. E.M. SUDARSANA NATCHIAPPAN: Sir, therefore, when the WTO was taken seriously by other countries, more so, by the developing countries, the developed countries felt that the developing countries have united together and, therefore, they could withstand the onslaught of the developed countries.

Sir, here, we have to clarify certain things. We are bound by many of the treaties, many of the multilateral agreements which will be coming before the WTO. That is why we are repeatedly requesting the Government that before taking up any discussion in the World Trade Organisation, the matter should be discussed at various fora. Sir, I can refer here to the constitutional provisions also. For signing the international agreements or the covenants, which can be entered into with various countries, the powers are vested with the Central Government. If we just look at the provisions of Article 246 of the Constitution of India, it has given the power to the Legislature. Then, there is Article 245, 'Extent of laws made by the Parliament and by the Legislatures of States.' It is under the main heading "Distribution of Legislative Powers". As far as the Legislature powers are concerned, Sir, we accept that the States' interest should be protected when a law is made by the Parliament, and more so, if they are trade laws. That is why we have given the powers to the Executive to go for any international agreement. It is binding upon the nation and that is given in Article 253. I will just quote Article 253 for consideration. The heading is, "Legislation for giving effect to international agreements." It says, "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference or association or other body." This is the power given to the Parliament and the Parliament can take up any legislative work on all these issues which are taken at the international level.

Now, if you see Article 73, Sir, which is regarding the powers of the Executive, 'you will find how this discussion is very much relevant. I appreciate once again Brindaji for brining this Resolution at this juncture because when we read Article 73, it clearly shows -- and I am reading that part of Article 73 - 'Extent of Executive Power of the Union' (1) subject to the provisions of this Constitution, the Executive power ...

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): Dr. Natchiappan, I think, you can continue your speech provided the Resolution is taken up next time. ...*(Interruptions)*... One second. please.

5.00 P.M.

SHRIMATI BRINDA KARAT: Sir, in view of the importance of this subject, I request that this unfinished Resolution should be carried to the next Session and be taken up as the first item on the first day allotted for Resolutions in that Session.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN) : I hope, the House agrees.

SOME HON. MEMBERS: Yes, Sir.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): So, the discussion is not completed. Dr. Natchiappan can continue his speech on the next day when this Resolution is taken up. ...*(Interruptions)*... that is, in the next Session.

SHRIMATI BRINDA KARAT : It should be the first item on the first day allotted for Resolutions.

THE VICE-CHAIRMAN (PROF. P. J. KURIEN): I have agreed to that; there is no problem. So, the discussion is unfinished and it will continue. ...*(Interruptions)*...

Now, the House stands adjourned to meet at 11.00 a.m. on Monday, the 14th December, 2009.

The House then adjourned at five of the clock till eleven of the clock on Monday, the 14th December, 2009.